

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

Office of Project Management and Permitting

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June 26, 2012

Office of Environmental Information (OEI) Docket (Mail Code: 28221T)  
Docket # EPA-HQ-ORD-2012-0358  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue N.W.  
Washington, DC 20460.

Ms. Lisa Jackson  
Administrator  
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RE: Comments on External Peer Review Panel and Charges for EPA Draft "An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska", External Review Panel Docket ID No. EPA-HQ-ORD-2012-0358 and related Docket ID No. EPA-HQ-ORD-2012-0276

Dear Ms. Jackson and Mr. McLerran:

This letter provides the State of Alaska comments on the charge questions for the Environmental Protection Agency's (EPA's) "An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska" ("assessment"). Please note that these comments below do not endorse the assessment or external peer review panel process or any premature exercise of EPA's Clean Water Act Section 404(c) authority in the Bristol Bay watershed.

The Alaska Department of Natural Resources (ADNR), through the Office of Project Management and Permitting (OPMP), coordinates review of large mining and other resource and

*"To responsibly develop Alaska's resources by making them available for maximum use and benefit consistent with the public interest."*

development projects in Alaska that involve multiple state agencies (*see* Alaska Statutes Sec. 27.05.010). The State has previously sent several letters to EPA on the assessment effort. As was the case with the assessment, we believe that the period of time allowed for public comment on the charge questions is inadequate, but offer the following in light of the deadline set by EPA in its Federal Register notice.

### **Timing of Panel Activities and Public Meeting**

Comments on the review panel and charge questions are due to EPA on June 26, 2012. The deadline for comments on the assessment is July 23, 2012. EPA and the external peer review panel will convene public meetings in Anchorage, Alaska on August 7 through 9, 2012. The public is only invited to the sessions on August 7 and 8. EPA has not given the public adequate information regarding the scope, schedule and process for the external peer review of the assessment.

The accelerated review schedule for public comment on the assessment will not give the public or state and federal agencies an opportunity to benefit from these meetings or from any written comments produced by the review panel for their own reviews of the assessment. Because they are also reviewing the same version of the draft assessment, the external review panel will not have new information brought forth in public comments. The State also notes that the panel is convening during summer months when many Alaskans are engaged in outdoor activities either for employment, recreation or subsistence and may not be available for public meetings.

### **External Panel Membership and Areas of Expertise**

The state's comments on the panel are based on the very limited information available for each member. The panel members appear to have wide-ranging expertise regarding fisheries, ecology and, for some members, mining operations and hydrology. While some panel members have experience working in Alaska or with potential impacts from mining, most do not. The panel members should be circumspect about assumptions based on fisheries, hydrology, ecology, and mining expertise gained from other areas of the United States or other countries. The twelve charge questions include complex technical questions regarding mining, transportation, and pipelines; the panel makeup is not strongly represented in these disciplines.

### **General Comments and Concerns**

The tone and phrasing of the charge questions demonstrate that this is a complicated effort to assess impacts from a hypothetical mining scenario. The assessment and the peer review questions as formulated focus only on potential and speculative negative impacts of mining. As formulated, the charge questions leave the reviewers without the ability to respond with innovative solutions for mitigation measures, best practices, or an integrated and engaged state and federal interdisciplinary regulatory approach to review an actual mining proposal based on its merits.

The State has a number of concerns regarding the nature and scope of the charge questions, including the following:

- 1) The panel members should limit their review to the topic areas for which they are individually qualified, based on their expertise. For each of the charge questions, the panel findings should explain and document the independent views of the panel members in response to the question.
- 2) The reviewers should have open access to, as well as the time to review, all reference materials, mathematical and statistical models, regional or site-specific data, or other relevant resources used to develop the assessment.
- 3) The panel members should review and comment on whether the hypothetical mine scenario presented in the assessment is a realistic representation of a project that will require a thorough state and federal permitting process and a National Environmental Policy Act (NEPA) review.
- 4) In the absence of information that would be collected and vetted through the lawful state and federal permitting processes, the peer review panel should be allowed to consider whether the assessment adequately takes into account technologies, management systems, or monitoring that would mitigate potential risks to fish.
- 5) EPA should document how the results of the peer review panel's conclusions will be used to finalize the assessment, and to potentially exercise EPA's Clean Water Act Section 404(c) authority in Bristol Bay or elsewhere in the United States.
- 6) The questions are phrased to direct the panel to an affirmative response to the question topic areas of EPA's assessment rather than asking if the basis of the risk itself is characterized appropriately.
- 7) Given the short time frame to review the assessment and its appendices, the panel does not appear to have been given sufficient opportunity to comprehensively review the document and to provide well researched and carefully considered responses to adequately address the questions.
- 8) With respect to cumulative impacts from other potential mining in the area as described in the assessment, it is unlikely that the panel has the information necessary to assess the potential impacts of these or other mines that could be developed in the Bristol Bay region.
- 9) In charge question Number 3, EPA assumed two potential modes for mining operations: A no-failure mode of operation and a mode outlining one or more types of failures. The no failure operation mode assumes best practical engineering and mitigation practices are in place and in optimal operating condition. The charge question does not accurately describe the assessment of the no-failure operation mode, notwithstanding that it reiterates a statement found in the executive summary as follows: "*The no-failure operation mode assumes best practical engineering and mitigation practices are in place and in optimal operating condition.*" Chapter 4, which provides the mining background

and the no-failure mining scenario, states: “*Described mining practices and our mine scenario reflect the current practices for porphyry copper mining around the world, and represent current good, but not necessarily best, mining practices. (page 4-1)*”; and “*Our mine scenario represents current good, but not necessarily best, mining practices. (page 4-17)*”

**Additional Charge Questions that Should Be Posed**

- 1) Is the assessment based on federally approved state water quality standards or does it ignore or deviate from those standards? Please explain, and document the individual views of each of the panel members in response to this question with respect to each relevant state water quality standard.
- 2) Based upon the time available for your peer review, were you able to determine whether all of the information (including third party reports and modeling) that EPA relied upon in preparing the assessment was subject to peer review before the assessment was disseminated to the public and to the panel? Please explain, and document the individual views of each of the panel members in response to this question.
- 3) Do you believe that you were provided enough time to review the assessment and referenced material and to conduct independent research to critically analyze the information and conclusions reached in the assessment? Please explain, and document the individual views of each of the panel members in response to this question.
- 4) Does the failure to consider and account for potential socio-economic benefits from mining create a perceived or actual bias against mining in the assessment? Please explain, and document the independent views of each of the panel members in response to this question.

Thank you for the opportunity to comment on the external peer review panel and charge questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Sara M. Crafford", followed by a small flourish.

Thomas Crafford, Director  
DNR Office of Project Management and Permitting

- cc. Ed Fogels (Alaska Department of Natural Resources Deputy Commissioner)  
Randy Bates (Alaska Department of Fish and Game Director of Habitat)  
Lynn Kent (Alaska Department of Environmental Conservation Deputy  
Commissioner)  
Curtis Thayer (Alaska Department of Commerce, Community, and Economic  
Development Deputy Commissioner)  
Ruth Hamilton Heese (Alaska Department of Law)